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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT

ESUS MARIA VALDEZ QUINTERO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JESUS MARIA VALDEZ QUINTERO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

I

QUESTIONS PRESENTED

1. Was The Evidence Submitted Sufficient
To Sustain The Conviction?
2. Did The Court commit error by permitting the
defendant's witness to testify after the witness
was fully advised of his constitutional rights
relating to self incrimination?

II

STATEMENT OF FACTS

On May 25, 1967, Frank Figueroa, Agent of the Federal Bureau of Narcotics was introduced to one Jose Galindo by an informant of the Bureau of Narcotics (R. T. 66). ^{1/}

The introduction took place at 3067 Feather Street, Baldwin Park, California (R. T. 66). Agent Figueroa and Galindo discussed the possibility of Figueroa purchasing heroin and arrangements were made for Figueroa to return the following day (R. T. 68).

On May 26, 1967 Agent Figueroa and the informant returned to the residence located at 3067 Feather Street, Baldwin Park at about 1:00 P. M. , and met once again with Galindo (R. T. 68). After Galindo received a telephone call, he left the residence along with Agent Figueroa and the informant. These three men proceeded in the informant's truck to Tenth and San Pedro Streets, Los Angeles (R. T. 69). At this location Galindo left the vehicle and met with defendant Jesus Maria Valdez Quintero (R. T. 70, 73). After a brief conversation Galindo returned to the truck and defendant Quintero entered a 1961 Mercury Automobile (R. T. 70).

Galindo, the informant, and Agent Figueroa entered the truck and drove past the 1961 Mercury. Galindo then signaled

^{1/} Refers to reporter's transcript

the people in the automobile to follow the truck (R. T. 71). Co-defendant, Celia Gonzales Ramirez, was also in the Mercury (R. T. 73). The truck, with the Mercury following, proceeded to 3067 Feather Street, Baldwin Park, where all of these people entered the residence (R. T. 71, 73).

Inside the residence Galindo introduced Agent Figueroa and the informant to defendant Quintero and co-defendant Ramirez. Galindo, speaking to Quintero and Ramirez, referred to Agent Figueroa and the informant as the "people who want to buy the heroin." (R. T. 75.)

Agent Figueroa asked Quintero, "Do you have the heroin?" Quintero responded that he did have the heroin (R. T. 76).

Quintero acknowledged \$500 was an agreeable price for seven ounces of heroin (R. T. 76). Agent Figueroa then asked Quintero if he [Figueroa] could see and examine the seven ounces of heroin. Quintero then instructed the co-defendant Ramirez to produce the heroin for Agent Figueroa (R. T. 76). Miss Ramirez then removed a package from her purse and handed it to Quintero who handed it to Agent Figueroa, who opened the package (R. T. 77). This package contained Government Exhibit No. 1 (R. T. 79) and was determined to be heroin (R. T. 82).

After Agent Figueroa opened the package Quintero asked him if he had the money. Agent Figueroa said that he had the money and would get it to Quintero as soon as he looked at the

heroin (R. T. 78). Agent Figueroa examined the heroin and told the informant to go to the car and get the scales so that the quantity of heroin could be weighed (R. T. 80). Quintero and Miss Ramirez said that they never gave bad weight to one of their heroin customers (R. T. 81).

Shortly after the informant left the residence to get the scales, agents of the Federal Bureau of Narcotics responding to a pre-arranged signal by the informant entered the above described residence and placed Quintero, Ramirez and Galindo under arrest (R. T. 85). At the time of the transaction there was no mention of the heroin order form issued for that purpose by the Secretary of the Treasury. This order form was not produced by any of the parties to the transaction (R. T. 86).

The first witness called on behalf of the defendant Quintero was Mr. Jose Rivera Galindo, who the day prior to trial, had entered a guilty plea to violating the Federal Narcotics laws (R. T. 118, 123). Galindo was charged in the same three count indictment which was before the Court in the instant case (R. T. 125). Galindo plead guilty to one count (R. T. 126). Prior to the testimony of Galindo there was some discussion with regard to Galindo's constitutional rights of self incrimination (R. T. 118-123).

At the beginning of the defendant's case Galindo was not present in the courtroom. Counsel for Quintero objected to the Court's suggestion and request that Quintero proceed with his defense during the time period that the Court was waiting for

Galindo (R. T. 114-123). Galindo arrived and took the witness stand and was fully advised of his constitutional rights with respect to self incrimination (R. T. 124-128).

Direct examination of Galindo was then commenced by counsel for Quintero (R. T. 129). Galindo testified on direct examination that Quintero knew nothing about the heroin transaction involved in this case (R. T. 130).

III

ARGUMENT

1. The Evidence Was Sufficient To Sustain The Conviction.
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It is a well settled rule that on appeal the Court is required to consider the evidence in a light most favorable to the Government. The test applied is whether reasonable minds could find that the evidence excludes every hypothesis but that of guilt.

Lustiber v. United States, 386 F.2d 132, 134
(9th Cir. 1967);

Barnard v. United States, 342 F.2d 309, 317
(9th Cir. 1965);

Kaplan v. United States, 329 F.2d 561
(9th Cir. 1964);

(9th Cir. 1963).

The evidence in the instant case was substantial against Quintero. At the time and place of transaction which led to the instant case Quintero was not only present but was indeed an active participant (R. T. 75-85). Agent Figueroa had made the arrangements for the heroin purchase the preceding day with one Jose Galindo (R. T. 68). When Galindo introduced Agent Figueroa to Quintero, Galindo said to Quintero that Figueroa was the one who wanted to buy the heroin (R. T. 75). A discussion ensued between Quintero and Agent Figueroa in which Agent Figueroa inquired if Quintero had the heroin. Quintero responded affirmatively (R. T. 76). After talking about the price Agent Figueroa requested to examine the heroin. At this point Quintero obtained the seven ounces of heroin from co-defendant Ramirez and handed it to Agent Figueroa (R. T. 77).

Quintero expressed his concern for the money and was told by Agent Figueroa that he would get the money as soon as he could examine the heroin and determine the weight of the heroin which was involved (R. T. 80). Quintero and co-defendant Ramirez stated that they never gave bad weight to any of their heroin customers (R. T. 81).

It is respectfully submitted that the evidence, considered in a light most favorable to the Government, is overwhelming to sustain the conviction of Quintero.

2. There Was No Error Committed By The Court In Permitting The Defendant's Witness To Testify After That Witness Had Been Fully And Completely Advised Of His Constitutional Rights Relating To Self Incrimination.
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Mr. Jose Galindo was called as a witness on behalf of Quintero. Galindo had previously entered a guilty plea to one count in the three count indictment (R. T. 118, 123, 125, 126). Galindo was not in Court when Quintero was ready to commence his case. The Court asked Quintero to begin his case while Galindo was on his way to the courtroom (R. T. 119-123).

Quintero insisted on waiting for Galindo to arrive and for Galindo to testify as his first witness (R. T. 114-123).

Counsel for Quintero indicated his belief that Galindo would exercise his Fifth Amendment rights against self incrimination (R. T. 119).

The only concern of the defendant was that they didn't want to proceed with any evidence prior to Galindo's testimony (R. T. 119-123).

Galindo took the witness stand and was fully and completely advised of his constitutional rights relating to self incrimination by the Court (R. T. 123-128). Galindo's testimony was very favorable to Quintero. Galindo testified that Quintero did not know anything about the heroin (R. T. 130).

The defendant cites no authority for the proposition that it is reversible error to permit a witness to testify in the absence

of his attorney.

Even if this could be considered error it must be harmless since Galindo was fully advised of his rights and still wanted to testify. Further, any error was surely harmless since Galindo's testimony was beneficial rather than harmful to Quintero.

IV

CONCLUSION

For the foregoing reasons it is respectfully submitted that the decision of the trial court should be affirmed.

Respectfully submitted,

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